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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/808,475
Filing Date: March 13, 2001
Appellant(s): FABER ET AL.

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John P. Ward
<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/22/2008 appealing from the Office action

mailed 04/09/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0116256	DE RAFAEL ET AL	08-2002
5,724,521	DEDRICK	03-1998
6,807,532	KOLLS	10-2004

6,839,737   FRISKEL   01-2005

6,732,183   GRAHAM   05-2004

6,323,894   KATZ   11-2001

2002/0069105   do Rosario Botelho et al   06-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36 and 38-44 are rejected under 35

U.S.C. 103(a) as being unpatentable over DeRafael (US 2002/0116256) in view of

Dedrick (US 5,724,521), Kolls (US 6,807,532) and Friskel (US 6,839,737).

As per claims 1, 16 and 31, DeRafael teaches:

A method comprising:

providing a list of advertisements to be displayed to a user, wherein one or more of

the advertisement comprise a link to be selected by the user to establish a

connection to conduct a real time communication between the user and an

advertiser (see DeRafael paragraph 12), compensate the user to conduct the real

time communication with the advertiser (see DeRafael paragraph 36); receiving from

the user a selection of the link from the list of advertisements (see DeRafael

paragraph 31);

responsive to the selection of the link establishing a real time communication

between the user and the advertiser to advertise or more items (see DeRafael

paragraph 13) and

compensating the user based on the duration of the real time communications between the user and the advertiser (see DeRafael paragraph 36 "more credit for viewing a lengthier interactive advertisement") to generate a balance to be paid to the user (see paragraph 36) and allowing the user to purchase one or more items by deducting from the balance to be paid to the user (See DeRafael paragraphs 14 and 36).

DeRafael fails to teach that the interactive advertisement comprises a link to be selected by the user to establish a telephonic connection to conduct real time, person to person, live communication between the user and an advertiser, an indicia of the advertiser is currently available for real-time communication with the user, a rate to compensate the user to conduct the real time, person to person, live communication with the advertiser and that during said person to person communication session between the user and the advertiser, allowing the user to purchase one or more items advertised by the advertiser in said session. However, Kolls teaches that it is old and well known in the promotion art to have interactive advertisements that comprises a link to be selected by the user to establish a telephonic connection to conduct real time, person to person, live communication between an user and an advertiser and allowing said user in said real time, person to person, live communication session with said advertiser, to purchase one or more items advertised by said advertiser (See Kolls col 47, lines 10-25). Friskel teaches that it is old and well known in the promotion art to indicate the online status (i.e. online, accepting chat) of users communicating in real time with other users (see

Friskel figure 4). Dedrick teaches a system that compensates users for interacting with advertisements where said compensation is based upon a "pay per time" rate of said interaction (see Dedrick col 13, lines 1-65; col 15, lines 25-30). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael would add the feature of allowing users to communicate in real-time, person to person, with advertisers when said users click an interactive ad, as taught by Kolls and to indicate the online status (i.e. online, accepting chat) of users communicating in real time with other users, as taught by Friskel, where said users would be compensated for interacting with said advertisers based upon a "pay per time" rate, as taught by Dedrick and where said users would be allowed to purchase advertised items during said real time, person to person, communication as taught by Kolls in order to allow said advertisers to have a more engaging communication with said users (i.e. "live communication"), which would help said advertisers to better target their ads to said users.

As per claims 2, 17 and 33, DeRafael teaches:

receiving a request from an advertiser to establish an interactive advertising link (see DeRafael paragraph 13); and

placing a link for an interactive advertisement among the advertisements (see DeRafael paragraph 12).

As per claims 3, 18 and 34, DeRafael teaches:

generating a record in an advertiser database, the record including advertiser information contained in the request, wherein the advertiser information includes one

or more of a compensation price, real-time advertiser availability, specific type of the advertisement, languages spoken by the advertiser and additional compensation incentives (see DeRafael paragraphs 14 and 31).

As per claims 4 and 19, DeRafael fails to teach:

wherein the compensating the user further comprises billing the advertiser a billing amount for each interaction with the user and transferring the billing amount to the one or more users. However, Dedrick teaches a system where end users are compensated for viewing advertisements by crediting the end users' accounts and debiting the advertisers' accounts (see Dedrick col 14, lines 10-25). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that when a user in the DeRafael's system interacts with an interactive advertisements, said user would be compensated for said interaction by crediting said end users' accounts and debiting said advertiser's account, as Dedrick teaches that it is old and well known to do so.

As per claims 5 and 20, DeRafael teaches:

wherein the billing the advertiser further comprises: measuring a duration of the interaction between the user and the advertiser (see paragraph 36 "award more credits for viewing a lengthier interactive advertisement) but fails to teach and calculating the billing amount for the advertiser based on the duration of the interaction and the rate paid by the advertiser. However, Dedrick a system that compensates end users for viewing advertisements where said compensation is based upon a "pay per time" rate (see Dedrick col 13, lines 10-65). Therefore, it would have been obvious to a person of

ordinary skill in the art at the time the application was made, to know that when a user in the DeRafael's system interacts with an interactive advertisements, said user would be compensated for said interaction by crediting said end users accounts and debiting said advertiser's account in a pay per time rate basis, as Dedrick teaches that it is old and well known to compensate users for viewing advertisements by paying said users a established pay per time rate.

As per claims 8, 23 and 32, DeRafael teaches:

selections from the one or more users, the method further comprises:

receiving a request from a user for connection to an interactive advertisement system via a communications link (see DeRafael paragraph 12);

establishing a connection between the user and the interactive advertisement system in order to provide the user with an interaction with a chosen advertiser, and providing the user with a list of multiple advertisement types available from the interactive advertisement system (see DeRafael paragraph 13).

As per claims 10 and 25, DeRafael teaches:

providing additional incentive-based links to one or more users to provide additional feedback (see DeRafael paragraph 13) but fails to teach enabling the one or more users o purchase one or more items advertise by the selected link. However, Kolls teaches that it is old and well known in the promotion art to have interactive advertisements that comprises a link to be selected by the user to establish a telephonic connection to conduct real time, person to person, live communication session between the user and an advertiser and while said user and said advertiser are speaking,

allowing said user to purchase one or more items advertised by the advertiser (See Kolls col 47, lines 10-25). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael interactive ads would allow users to communicate with advertisers in real-time, person to person, live communication as taught by Kolls and where said users would be allowed to purchase advertised items during said real time, person to person, communication, as taught by Kolls by using the credit obtained from interacting with said advertisers, as taught by DeRafael in order to provide said users an incentive to communicate with said advertisers.

As per claims 11 and 26, DeRafael fails to teach:

wherein the compensating the user further comprises:

enabling the user to purchase an advertised product with limited availability, such that the user is compensated by having the ability to purchase the advertised product. However, Kolls teaches that it is old and well known in the promotion art to have interactive advertisements that comprises a link to be selected by the user to establish a telephonic connection to conduct real time, person to person, live communication session between the user and an advertiser and while said user and said advertiser are speaking, allowing said user to purchase one or more items advertised by the advertiser (See Kolls col 47, lines 10-25). Therefore, the same argument made in claim 10 with the respect to the "purchase limitation" is also made in claims 11 and 26.

As per claims 12 and 27, DeRafael fails to teach:

charging the user a predetermined amount such that the user is compensated by having the ability to purchase the advertised product and transferring the predetermined amount to the advertiser. However, Kolls teaches that it is old and well known in the promotion art to have interactive advertisements that comprises a link to be selected by the user to establish a telephonic connection to conduct real time, person to person, live communication session between the user and an advertiser and while said user and said advertiser are speaking, allowing said user to purchase one or more items advertised by the advertiser in said session (See Kolls col 47, lines 10-25). Therefore, the same argument made in claim 10 with the respect to the "purchase limitation" is also made in claims 12 and 27.

As per claims 35 and 38, DeRafael fails to teach:

A public switched telephone network interface coupled to the processor to connect the user to the advertiser where the connection comprises a voice communication link to connect the user to the advertiser. However, Kolls teaches that it is old and well known in the promotion art to have interactive advertisements that comprises a link to be selected by the user to establish a telephonic connection to conduct real time person to person live communication between the user and an advertiser. Therefore, the same argument made in claim 1 regarding the telephone connection is also made in claims 35 and 38.

As per claim 36, DeRafael fails to teach

a wireless communications network interface coupled to the processor to connect the user to the advertiser. However, Official Notice is taken that it is old and well known

in the computer art to connect users to the Internet wirelessly. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael would allow user to connect to the Internet wirelessly as it is old and well known to do so.

As per claim 39, DeRafael teaches:

a banner advertisement link module to generate an interactive advertisement link as a banner advertisement in a web page (see DeRafael paragraph 12).

As per claim 40, DeRafael teaches:

a banner advertisement link module to generate an interactive advertisement link as a banner advertisement in a web page returned from a search engine web site (see DeRafael paragraph 12).

As per claim 41, DeRafael teaches:

wherein the selection of the link comprises a selection of a link to an interactive poll and wherein a user selecting the poll is compensated for providing a response to the poll (see DeRafael figure 5).

As per claim 42, DeRafael teaches:

wherein the providing the list of advertisements comprises providing a web page including one or more interactive advertising links to receive the selection (see DeRafael figure 4).

As per claim 43, DeRafael fails to teach:

wherein the connection for real time communications between one or more users and the advertiser is separate from a communication link used in the providing of the web page. However, <u>Kolls</u> teaches that it is old and well known in the communication art to have real time communications between users and advertisers that is separate from a communication link used to provide a webpage (see <u>Kolls</u> col 46, lines 20-40). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>DeRafael</u> would have a real time communications between users and advertisers that is separate from a communication link used to provide a webpage, as <u>Kolls</u> teaches that it is old and well known to do so.

As per claim 44, <u>DeRafael</u> fails to teach:

conferencing together a first telephone call to the user and a second telephone call to the advertiser. However, <u>Kolls</u> teaches that it is old and well known in the communication art to connects a user and advertiser by clicking an advertiser's ad (see <u>Kolls</u> col 46, lines 20-40). Therefore, the same argument made in claim 1 with respect to the real time, person to person, live communication limitation is also made in claim 44.

Claims 9, 14, 24, 29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>DeRafael</u> (US 2002/0116256) in view of <u>Dedrick</u> (US 5,724,521), <u>Kolls</u> (US 6,807,532), <u>Friskel</u> (US 6,839,737) and <u>Graham</u> (US 6,732,183).

As per claims 9, 24 and 37, <u>DeRafael</u> teaches:

providing additional incentive-based links to the one or more users to provide additional feedback (see DeRafael paragraphs 31 and 34) but fails to teach establishing a real-time video communications link between one or more users and an advertiser of the selected interactive advertisement and enabling one or more users to purchase one or more items advertised by the interactive seminar. However, Graham teaches that it is old and well known in the computer art to connect multiple users to online seminars via the Internet (see Graham col 14, lines 40-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael, Dedrick, Kolls, and Friskel would use the system taught by Graham in order to give user access to online seminars and would allow said user to order products when connecting with said online sessions in order that advertisers would have an incentive to compensate users for communicating with said advertisers.

As per claims 14 and 29, DeRafael fails to teach:

response to receiving, from an advertiser interface, a request to activate an interactive seminar, advertised by one of the advertisements, activating the seminar, to allow one or more users to select and participate in the interactive seminar. However, Graham teaches that it is old and well known in the computer art to connect multiple users to online seminars via the Internet (see Graham col 14, lines 40-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael, Dedrick, Kolls, and Friskel would use the system taught by Graham in order to give user access to online seminars as it is old and well known to do so, as taught by Graham. Graham does not expressly teach

responsive to receiving, from the advertiser interface, a request to de-activate the interactive seminar, de-activating the interactive seminar to prevent additional users from participating in the interactive seminar. However, Official Notice is taken that it is old and well known in the advertiser art to let people know when a telemarketer's seminar is no longer available. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that , DeRafael, Dedrick, Kolls, Friskel and Graham would de-active a seminar session that is no longer available and would let users know that said seminar is already closed, so said users do not waste their time trying to access a seminar that no longer exists.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeRafael (US 2002/0116256) in view of Dedrick (US 5,724,521), Kolls (US 6,807,532), Friskel (US 6,839,737) and Katz (US 6,323,894).

As per claim 45, DeRafael fails to teach wherein the establishing of the connection comprises joining the user with a current session of the advertiser communicating with more than one user who has selected the link. However, Katz teaches that the advent of video phones has enable users to visually communicate from remote locations where employees or customers in different places can take part in interactive training sessions or seminars with no loss of time for travel (see column 2, lines 5-20). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael, Dedrick, Kolls, and Friskel would allow users to participate in interactive seminars, as taught by

<u>Katz</u> in order to allow said users to be compensated for attending said seminars via the Internet.

Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>DeRafael</u> (US 2002/0116256) in view of <u>Dedrick</u> (US 5,724,521), <u>Kolls</u> (US 6,807,532), <u>Friskel</u> (US 6,839,737) and <u>do Rosario Botelho</u> (US 2002/0069105).

As per claims 7 and 22, <u>DeRafael</u> fails to teach:

wherein the list of advertisements is provided in response to a selection of one or more category of advertisers, an advertisement payment price, advertiser type and advertisement. However, <u>do Rosario Botelho</u> teaches that it is old and well known to display a list of advertisements in response to a selection of one or more category or type of advertisers (See figure 4). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>DeRafael</u> would display a list of advertisements in response to a selection of one or more category or type of advertisers, as <u>do Rosario Botelho</u> teaches that it is old and well known to do so.

(10) Response to Argument

The Appellant argues in pages 6-7 of the Brief that the cited references do not teach "compensating the user based on the rate and duration of the real time, person to person, live communications between the user and the advertiser to generate a balance to be paid to the user" because according to the Appellant, <u>De Rafael</u> requires completion of all the questions asked by a computer processor, while <u>Dedrick</u> requires the consumption of a unit of information and <u>Koll</u>'s suggestion of including the capability

to call the advertiser, for placing orders, would not, according to the Appellant, be sufficient to modify the compensation mechanism of <u>De Rafael</u> or <u>Dedrick</u>. The Examiner answers that <u>DeRafael</u> purpose is to provide a more engaging interaction between users and advertisers where advertisers compensate users that provide information to said advertiser (see paragraph 36-37) and where said user and said advertisers are connected when said users click an interactive advertisement of said advertisers (see paragraph 31). <u>Dedrick</u> teaches that it is old and well known in the promotion art to compensate users for viewing and interacting with advertisements based upon a "Pay per Time" basis (see <u>Dedrick</u> col 13, lines 10-45; col 15, lines 25-32; col 17, lines 20-30) and <u>Kolls</u> teaches that it is old and well known in the promotion art to have interactive advertisements that allows users and advertisers to connect in real time, person to person, live communication when said users click said interactive advertisements. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the <u>DeRafael</u>'s system would add the old and well known feature taught by <u>Kolls</u> of allowing advertisers to connect by telephone to users when said users click an interactive ads of said advertisers as said <u>Kolls</u>'s feature would allow said advertisers to engage and talk with said users and better obtain all the information that said advertisers needs to better target their ads to said users. Said users would be more willing to answer said advertisers' questions as said users would be compensated for said interaction based upon a "pay per time" rate, as taught by <u>Dedrick</u>. Therefore, contrary to Appellant's argument, the prior art teach Appellant's claimed invention.

The Appellant argues in pages 7-8 of the Brief that Dedrick does not teach compensating users for interacting with advertisements where said compensation is based upon "pay per time" rate of said interaction because according to the Appellant, the "pay per time" method in Dedrick is a payment method in which the user pays for consuming information. Furthermore, the Appellant argues in page 8 of the Brief that the "pay per time" type discussed in Dedrick is limited to the end user paying the publisher according to the period of time and therefore, according to the Appellant, Dedrick teaches away from paying the end user according to communication duration. The Examiner answers that Dedrick teaches that a "software tool include "cost type" and "cost value" fields that accompany each unit of electronic information. The cost type and cost value can be utilized to calculate a price that can be either credited or debited from the end user" (see col 13, lines 10-16), where the "cost type" are "Pay per view", "Pay Per Byte" and "Pay per time" (see col 13, lines 37-45). Therefore, contrary to Applicant's argument, Dedrick clearly teaches that users are compensated (i.e. credited) for interacting with advertisements based upon a "Pay per time" basis and contrary to Appellant's argument, Dedrick does not teach away from paying end user according to a communication duration.

The Appellant argues in page 7 of the Brief that even if the "pay per time" of Dedrick were considered as a credit model, the compensation mechanism of Dedrick is based on the time duration the user interacts with the server apparatus and not based, according to the Appellant, on the live conversation between the user and the advertiser. The Appellant further argues in pages 9-10 of the Brief that the prior arts do

not teach Appellant's claimed invention because according to the Appellant, there is a wide gap between crediting a user for web questions provided to a central computer and compensating based on a duration of a telephonic communication with the advertiser and that the Examiner failed to provide an explicit analysis to cover the gap. The Examiner answers that the Kolls' reference was used by the Examiner to teach the "live conversation" limitation where Kolls teaches that it is old and well known in the promotion art to have interactive advertisements that allows users and advertisers to connect in real time, person to person, live communication when said users click said interactive advertisements. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that DeRafael would add the feature of allowing users to communicate in real-time, person to person, with advertisers when said users click an interactive ad, as taught by Kolls, where said users would be compensated for interacting with said advertisers based upon a "pay per time" rate, as taught by Dedrick in order to allow said advertisers to have a more engaging communication with said users (i.e. "live communication"), which would help said advertisers to better target their ads to said users.

The Appellant argues in page 8 of the Brief that De Rafael teaches away from compensating the user based on a time period because according to the Appellant, De Rafael mentions in paragraph 7 that "end user could easily ignored the substance of the advertisement and merely accumulate the amount of time to receive credit". The Examiner answers that said statement of "end user could easily ignored the substance of the advertisement and merely accumulate the amount of time to receive credit" is

disclosed in <u>De Rafael</u>'s Background of the Invention paragraph 7, where said statement is referring to the deficiencies felt in the related art (i.e. Goldhaber) and where said deficiencies were corrected by <u>De Rafael</u> by providing a system that rewards users for viewing advertisements that is more engaging for users and thus more likely to maintain their interest, improves the likelihood that users absorbs the substance of the advertisements (see paragraph 8). Therefore, contrary to Appellant's argument, <u>De Rafael</u> does not teach away from Appellant's claimed invention.

The Appellant argues in pages 10-16 of the Brief that the prior arts do not teach claims 7, 9, 14, 22, 24, 29, 37 and 43-45 because according to the Appellant, in <u>De Rafael</u> and <u>Dedrick</u>, the rewards are based on the interaction over the connection between the user and the server processor or based on consuming information from the server apparatus of <u>Dedrick</u>. The Examiner answers that <u>Kolls</u> teaches that it is old and well known in the promotion art to have interactive advertisements that allows users and advertisers to connect in real time, person to person, live communication when said users click said interactive advertisements. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the <u>DeRafael</u>'s system would add the old and well known feature taught by <u>Kolls</u> of allowing advertisers to connect by telephone to users when said users click an interactive ads of said advertisers as said <u>Kolls</u>'s feature would allow said advertisers to engage and talk with said users and better obtain all the information that said advertisers needs to better target their ads to said users. Said users would be more willing to answer said advertisers' questions as said users would be compensated for said interaction based

upon a "pay per time" rate, as taught by <u>Dedrick</u>. Therefore, contrary to Appellant's

argument, the prior art teach Appellant's claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/DANIEL LASTRA/
Examiner, Art Unit 3688

Conferees:

/James Myhre/
SPE, Art Unit 3688

Vincent Millin /vm/

Appeals Practice Specialist